TRANSMITTAL OF APPEAL BRIEF

Docket No.
66729/P028US/10613659

In re Application of: Roy Schoenberg

Application No.	Filing Date	Examiner	Group Art Unit
10/825,352-Conf. #8650	April 15, 2004	V. D. Koppikar	3686

Invention: RULE MANAGEMENT METHOD AND SYSTEM

TO THE COMMISSIONER OF PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: August 11, 2009 .

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This sheet is submitted in duplicate.

Dated: October 9, 2009

Jody C. Bishop
Attorney Reg. No. : 44,034
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
(214) 855-8007

Appeal Brief Transmittal

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Dated: October 9, 2009 Signature: Donna Forbit (Donna Forbit)

Appeal Brief
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Dated: October 9, 2009 Signature: Donna Forbit
(Donna Forbit)

Docket No.: 66729/P028US/10613659
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Roy Schoenberg

Application No.: 10/825,352 Confirmation No.: 8650

Filed: April 15, 2004 Art Unit: 3686

For: RULE MANAGEMENT METHOD AND SYSTEM Examiner: V. D. Koppikar

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under 37 C.F.R. § 41.37(a), this brief is filed within two months of the Notice of Appeal filed August 11, 2009, and is in furtherance of said Notice of Appeal.

The fees required under 37 C.F.R. § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

The TriZetto Group, Inc.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 40 claims pending in application.

B. Current Status of Claims

1. Claims canceled: None

2. Claims withdrawn from consideration but not canceled: None

3. Claims pending: 1-40

4. Claims allowed: None

5. Claims rejected: 1-40

C. Claims On Appeal

The claims on appeal are claims 1-40.

IV. STATUS OF AMENDMENTS

A first Final Office Action was mailed March 17, 2009, which finally rejected claims 1-40. In response, Applicant filed a response (on April 23, 2009) that presented a single amendment for correcting a minor typographical error in claim 30 by deleting an extraneous "the", and which further presented arguments traversing the grounds of rejection, including traversal of certain rejections under 35 U.S.C. §103 that were based on a reference (*Schoenberg)* that could not properly be used in a §103 rejection in accordance with §103(c). An Advisory Action was then mailed April 30, 2009, which maintained the rejections with no further reasoning beyond a statement that the arguments submitted on April 23, 2009 did not overcome the rejections. The Advisory Action further noted that for purposes of appeal the minor amendment to claim 30 would not be entered. Applicant fails to understand why the minor amendment was not entered for purposes of appeal, as the Advisory Action offered no explanation in that regard.

In response to the Advisory Action, Applicant's representative, Jody Bishop, called the Examiner and the Examiner's supervisor and argued that the Advisory Action was in clear error at least because there was absolutely no basis for maintaining the §103 rejections that were based on the *Schoenberg* reference because that reference could not be used in a §103 rejection in

accordance with §103(c). The Examiner's supervisor agreed with Applicant's representative, and the Advisory Action was withdrawn. The Examiner then mailed a second Final Office Action, dated May 15, 2009, which maintained the same rejections as in the first Final Office Action but which replaced the *Schoenberg* reference with a new reference, *Pawlikowski*. Applicant's representative, Jody Bishop, conducted a telephonic interview with the Examiner and argued that the newly-applied *Pawlikowski* fails to teach or suggest the subject matter for which it was relied upon by the Examiner as disclosing, namely that it fails to teach or suggest any access key that controls access to patient-specific information, such as a medical record, as recited by claim 12, but instead discloses an access key that controls access for upgrading operational routines of a medical device.

In response to that telephonic interview, yet a third Final Office Action was mailed by the Examiner, dated June 11, 2009, which again maintains substantially the same rejections as in the second Final Office Action but which replaces the *Pawlikowski* reference with yet a new reference, *Claud*. Because Applicant continues to maintain that the rejections raised by the Examiner are improper (for reasons elaborated further herein), the present appeal is taken in response to this third Final Office Action.

Because (for reasons not understood to Applicant) the Advisory Action of April 30, 2009 indicated that the minor amendment to claim 30 presented in the After Final Amendment of April 23, 2009 was not entered for purposes of appeal and because Applicant has not re-submitted that amendment, the claims on appeal are those as rejected in the first Final Office Action (thus not including the minor amendment to claim 30). A complete listing of the claims is provided in the Claims Appendix hereto.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following provides a concise explanation of the subject matter defined in each of the separately argued claims involved in the appeal, referring to the specification by page and line number and to the drawings by reference characters, as required by 37 C.F.R. § 41.37(c)(1)(v). Each element of the claims is identified by a corresponding reference to the specification and drawings where applicable. It should be noted that the citation to passages in the specification and drawings for each claim element does not imply that the limitations from the specification and drawings should be read into the corresponding claim element.

According to one claimed embodiment, such as that of independent claim 1, a rule processing computer-based method is provided. The method comprises receiving user input to a processor-based computer for defining a computer-executable rule that is stored to a computer-readable medium, wherein when executed by the computer the computer-executable rule causes the computer to identify a target group of patients chosen from a group of existing patients, *see e.g.,* block 220 of FIGURE 8, paragraphs 0007-0008 at page 2, lines 1-9, paragraph 0012 at page 2, lines 20-25, and paragraphs 0046-0049 at page 12, line 2 – page 13, line 2. The method further comprises receiving user input to the computer defining, in computer-readable information stored to a computer-readable medium, a computer-executable action to be taken by said computer concerning one or more patients within the target group of patients, *see e.g.,* block 224 of FIGURE 8, paragraphs 0007-0009 at page 2, lines 1-15, paragraph 0012 at page 2, lines 20-25, and paragraph 0050 at page 13, lines 3-13. The method further comprises scheduling, in computer-readable information stored to a computer-readable medium, an execution time for the action, *see e.g.,* block 226 of FIGURE 8, paragraphs 0010-0011 at page 2, lines 16-19, paragraph 0012 at page 2, lines 20-25, and paragraph 0051 at page 13, lines 14-20. The method further comprises processing, by the computer, a plurality of computer-based medical records against said computer-executable rule to determine one or more of said medical records that satisfy the rule, wherein each of the medical records contain at least a portion of a corresponding patient's medical history stored to computer-readable medium, *see e.g.,* block 222 of FIGURE 8, exemplary medical record 180 of FIGURE 7, paragraphs 0007-0008 at page 2, lines 1-9, and paragraphs 0046-0049 at page 12, line 2 – page 13, line 2. The method further comprises

initiating by the computer, in accordance with the scheduled execution time, the action concerning corresponding patients to which the determined one or more medical records that satisfy the rule relate, *see e.g.,* block 228 of FIGURE 8, paragraphs 0007-0008 at page 2, lines 1-9, and paragraphs 0046-0053 at page 12, line 2 – page 13, line 26.

In certain embodiments, such as that of dependent claim 2, the processing includes processing the medical records to determine which of the medical records define the existence of a selected condition, *see e.g.,* paragraph 0008 at page 2, lines 6-9. As one example, as recited in dependent claim 3, the selected condition may concern a medical condition of a patient, *see e.g.,* paragraph 0008 at page 2, lines 6-9. As another example, as recited in dependent claim 4, the selected condition may concern a physical criteria of a patient, *see e.g.,* paragraph 0008 at page 2, lines 6-9. As another example, as recited in dependent claim 5, the selected condition may concern a habit of a patient, *see e.g.,* paragraph 0008 at page 2, lines 6-9. As still another example, as recited in dependent claim 6, the selected condition may concern an activity of a patient, *see e.g.,* paragraph 0008 at page 2, lines 6-9.

According to another claimed embodiment, such as that of independent claim 12, a rule processing computer-based method is provided. The method comprises determining by a computer, for a specific computer-executable rule that is stored to a computer-readable medium, a target group of patients, wherein said target group of patients comprise at least a subset of patients for whom a particular medical service provider has an access key that grants the medical service provider access to medical records of the patients, *see e.g.,* block 220 of FIGURE 8, access keys 12-16 of FIGURE 1, paragraphs 0007-0008 at page 2, lines 1-9, paragraph 0012 at page 2, lines 20-25, paragraphs 0016-0024 at page 4, line 2 – page 5, line 27, and paragraphs 0046-0049 at page 12, line 2 – page 13, line 2. The method further comprises determining, for said specific computer-executable rule, an action to be initiated by the computer concerning one or more patients within the target group of patients whose respective medical records satisfy said specific computer-executable rule, wherein the action comprises communicating information to the one or more patients, *see e.g.,* block 224 of FIGURE 8, paragraphs 0007-0009 at page 2, lines 1-15, paragraph 0012 at page 2, lines 20-25, and paragraph 0050 at page 13, lines 3-13.

The method further comprises determining, for said specific computer-executable rule, an execution time for the action, *see e.g.,* block 226 of FIGURE 8, paragraphs 0010-0011 at page 2, lines 16-19, paragraph 0012 at page 2, lines 20-25, and paragraph 0051 at page 13, lines 14-20. The method further comprises initiating by the computer the action concerning the one or more patients within the target group of patients on or after the execution time, *see e.g.,* block 228 of FIGURE 8, paragraphs 0007-0008 at page 2, lines 1-9, and paragraphs 0046-0053 at page 12, line 2 – page 13, line 26.

In certain embodiments, such as that of dependent claim 17, the target group of patients is defined by processing the medical records to determine which of the medical records define the existence of a selected condition specified by the specific computer-executable rule, *see e.g.,* block 220 of FIGURE 8, paragraphs 0007-0008 at page 2, lines 1-9, paragraph 0012 at page 2, lines 20-25, and paragraphs 0046-0049 at page 12, line 2 – page 13, line 2.

According to another claimed embodiment, such as that of independent claim 18, a computer program product residing on a computer readable medium having a plurality of instructions stored thereon which, when executed by the processor, cause that processor to:

determine from computer-based medical records of patients for whom a particular medical service provider has an access key that grants the medical service provider access to said computer-based medical records, a target group of said patients whose respective medical records satisfy a rule defined by the medical service provider, *see e.g.,* block 220 of FIGURE 8, exemplary medical record 180 of FIGURE 7, access keys 12-16 of FIGURE 1, paragraphs 0007-0008 at page 2, lines 1-9, paragraph 0012 at page 2, lines 20-25, and paragraphs 0046-0049 at page 12, line 2 – page 13, line 2;

determine an action to be taken concerning the determined target group of patients, *see e.g.,* block 224 of FIGURE 8, paragraphs 0007-0009 at page 2, lines 1-15, paragraph 0012 at page 2, lines 20-25, and paragraph 0050 at page 13, lines 3-13; and

schedule an execution time for the action to be taken concerning the determined target group of patients, *see e.g.,* block 226 of FIGURE 8, paragraphs 0010-0011 at page 2, lines 16-19, paragraph 0012 at page 2, lines 20-25, and paragraph 0051 at page 13, lines 14-20.

In certain embodiments, such as that of dependent claim 19, the instructions for determining said target group of said patients whose respective medical records satisfy said rule include instructions for processing the medical records to determine which of the medical records define the existence of a selected condition specified by said rule, *see e.g.,* paragraph 0008 at page 2, lines 6-9. As one example, as recited in dependent claim 20, the selected condition may concern a medical condition of a patient, *see e.g.,* paragraph 0008 at page 2, lines 6-9. As another example, as recited in dependent claim 21, the selected condition may concern a physical criteria of a patient, *see e.g.,* paragraph 0008 at page 2, lines 6-9. As another example, as recited in dependent claim 22, the selected condition may concern a habit of a patient, *see e.g.,* paragraph 0008 at page 2, lines 6-9. As still another example, as recited in dependent claim 23, the selected condition may concern an activity of a patient, *see e.g.,* paragraph 0008 at page 2, lines 6-9.

According to another claimed embodiment, such as that of independent claim 29, a computer program product residing on a computer readable medium having a plurality of instructions stored thereon which, when executed by the processor, cause that processor to:

receive user input from a medical service provider for defining a computer-executable rule for identifying one or more patients of said medical service provider who satisfy said rule, *see e.g.,* block 220 of FIGURE 8, exemplary medical record 180 of FIGURE 7, paragraphs 0007-0008 at page 2, lines 1-9, paragraph 0012 at page 2, lines 20-25, and paragraphs 0046-0049 at page 12, line 2 – page 13, line 2;

receive user input from said medical service provider for defining a computer-executable action to be taken concerning the identified one or more patients of said medical service provider who satisfy said rule, *see e.g.,* block 224 of FIGURE 8, paragraphs 0007-0009 at page 2, lines 1-15, paragraph 0012 at page 2, lines 20-25, and paragraph 0050 at page 13, lines 3-13;

determine, for the computer-executable rule, an execution time for the action, *see e.g.,* block 226 of FIGURE 8, paragraphs 0010-0011 at page 2, lines 16-19, paragraph 0012 at page 2, lines 20-25, and paragraph 0051 at page 13, lines 14-20;

process a plurality of computer-based medical records of patients for whom said medical service provider has an access key that grants the medical service provider access to said

computer-based medical records against said computer-executable rule to identify one or more of said patients whose medical records satisfy the rule, *see e.g.,* block 220 of FIGURE 8, access keys 12-16 of FIGURE 1, paragraphs 0007-0008 at page 2, lines 1-9, paragraph 0012 at page 2, lines 20-25, paragraphs 0016-0024 at page 4, line 2 – page 5, line 27, and paragraphs 0046-0049 at page 12, line 2 – page 13, line 2; and

initiate, on or after the execution time, the action concerning the one or more patients whose medical records satisfy the rule, *see e.g.,* block 228 of FIGURE 8, paragraphs 0007-0008 at page 2, lines 1-9, and paragraphs 0046-0053 at page 12, line 2 – page 13, line 26.

In certain embodiments, such as that of dependent claim 34, the instructions for processing the medical records against said rule comprises instructions for determining which of the medical records define the existence of a condition specified by said rule, *see e.g.,* paragraph 0008 at page 2, lines 6-9.

In certain embodiments, such as that of dependent claim 36, the computer program product of claim 29 further comprises instructions that when executed by the processor cause the processor to: determine, from a plurality of computer-based medical records stored to a computer-readable repository, ones of said computer-based medical records for which said medical service provider has an access key that grants the medical service provider access to said computer-based medical records, said determined ones of said computer-based medical records for which said medical service provider has an access key that grants the medical service provider access to said computer-based medical records forming a target group of computer-based medical records, *see e.g.,* block 220 of FIGURE 8, access keys 12-16 of FIGURE 1, paragraphs 0007-0008 at page 2, lines 1-9, paragraph 0012 at page 2, lines 20-25, paragraphs 0016-0024 at page 4, line 2 – page 5, line 27, and paragraphs 0046-0049 at page 12, line 2 – page 13, line 2.

According to another claimed embodiment, such as that of independent claim 35, a rule processing computer-based method is provided. The method comprises processing, by a record processing module, a plurality of computer-based multi-portion medical records that are stored to a computer-readable repository and that contain medical history information for a plurality of

patients for determining a target group of said plurality of patients whose medical records a particular medical service provider is authorized to access, wherein each portion of each of the multi-portion medical records is assigned a respective confidentiality level, *see e.g.,* block 220 of FIGURE 8, exemplary medical record 180 of FIGURE 7, access keys 12-16 of FIGURE 1, paragraphs 0007-0008 at page 2, lines 1-9, paragraph 0012 at page 2, lines 20-25, paragraphs 0016-0024 at page 4, line 2 – page 5, line 27, and paragraphs 0046-0049 at page 12, line 2 – page 13, line 2. The method further comprises processing, by a rule processing engine, the medical records of the determined target group of patients against a computer-executable rule defined by said particular medical service provider to identify one or more of said target group of patients whose medical records satisfy the rule, *see e.g.,* block 222 of FIGURE 8, exemplary medical record 180 of FIGURE 7, paragraphs 0007-0008 at page 2, lines 1-9, and paragraphs 0046-0049 at page 12, line 2 – page 13, line 2. The method further comprises determining, by the rule processing engine, an action defined by said particular medical service provider for the rule, said determined action to be taken concerning said identified one or more patients within the target group of patients, *see e.g.,* block 226 of FIGURE 8, paragraphs 0010-0011 at page 2, lines 16-19, paragraph 0012 at page 2, lines 20-25, and paragraph 0051 at page 13, lines 14-20. The method further comprises scheduling, by the rule processing engine, an execution time for the action, *see e.g.,* block 226 of FIGURE 8, paragraphs 0010-0011 at page 2, lines 16-19, paragraph 0012 at page 2, lines 20-25, and paragraph 0051 at page 13, lines 14-20.

According to another claimed embodiment, such as that of independent claim 39, a system is provided. The system comprises a computer-readable repository for storing medical records, *see e.g.,* centralized medical record repository 52 of FIGURE 2. The system further comprises an access key management system for managing access keys that grant a medical service provider authorized access to at least a portion of said medical records, *see e.g.,* key management system 10 of FIGURES 1-2, access keys 12-16 of FIGURE 1, and paragraphs 0016-0024 at page 4, line 2 – page 5, line 27. The system further comprises a rule processing engine (e.g., rule processing module 64 of FIGURE 2) configured to:

a) receive input from a medical service provider to define a rule specifying criteria for selecting one or more of said medical records to which said medical service provider

has an access key that grants the medical service provider with authorized access, *see e.g.,* block 220 of FIGURE 8, exemplary medical record 180 of FIGURE 7, paragraphs 0007-0008 at page 2, lines 1-9, paragraph 0012 at page 2, lines 20-25, and paragraphs 0046-0049 at page 12, line 2 – page 13, line 2;

b) receive input specifying corresponding action to take when said rule is satisfied, *see e.g.,* block 224 of FIGURE 8, paragraphs 0007-0009 at page 2, lines 1-15, paragraph 0012 at page 2, lines 20-25, and paragraph 0050 at page 13, lines 3-13;

c) receive input specifying a corresponding execution time for performing said corresponding action, *see e.g.,* block 226 of FIGURE 8, paragraphs 0010-0011 at page 2, lines 16-19, paragraph 0012 at page 2, lines 20-25, and paragraph 0051 at page 13, lines 14-20;

d) process said medical records for which said medical service provider has an access key that grants the medical service provider with authorized access against said rule to determine one or more of said medical records that satisfy the rule, *see e.g.,* block 222 of FIGURE 8, exemplary medical record 180 of FIGURE 7, paragraphs 0007-0008 at page 2, lines 1-9, and paragraphs 0046-0049 at page 12, line 2 – page 13, line 2; and

e) initiate, for patients to whom the determined one or more medical records that satisfy the rule relate, said corresponding action to be performed at said corresponding execution time, *see e.g.,* block 228 of FIGURE 8, paragraphs 0007-0008 at page 2, lines 1-9, and paragraphs 0046-0053 at page 12, line 2 – page 13, line 26.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claim 35 is rejected under 35 U.S.C. §112, second paragraph because the word "respective" is asserted by the Examiner as being indefinite;

B. Claims 1-8, 11-14, 17, 28-31, and 34 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,304,582 to Kerr, II et al. (hereinafter "*Kerr*") (note that page 3 of the third Final Office Action incorrectly identifies *Kerr* as U.S. Pat. No. 7,304,852, but it actually appears to be relying on U.S. Pat. No. 7,304,582) in view of U.S. Patent No. 6,041,347 to Harsham (hereinafter "*Harsham*") and further in view of U.S. Patent Application Publication No. 2004/0205540 to Vulpe (hereinafter "*Vulpe*");

C. Claims 9-10, 15-16, and 32-33 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kerr* in view of U.S. Patent No. 7,447,663 to Barker (hereinafter "*Barker*"); and

D. Claims 12-28 and 35-40 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kerr* in view of U.S. Patent Application Publication No. 2005/0216313 to Claud (hereinafter "*Claud*") and further in view of *Vulpe* and still further in view of U.S. Patent No. 6,398,727 to Bui (hereinafter "*Bui*").

VII. ARGUMENT

Appellant respectfully traverses the outstanding rejections of the pending claims, and requests that the Board reverse the outstanding rejections in light of the remarks contained herein. The claims do not stand or fall together. Instead, Appellant presents separate arguments for various independent and dependent claims. Each of these arguments is separately argued below and presented with separate headings and sub-heading as required by 37 C.F.R. § 41.37(c)(1)(vii).

A. Rejection of Claim 35 Under 35 U.S.C. §112, Second Paragraph

Claim 35 is rejected under 35 U.S.C. §112, second paragraph as being indefinite. Appellant maintains that the rejection of claim 35 is improper and should be withdrawn.

The third Final Office Action maintains that it is not clear what the word "respective" is intended to mean. The third Final Office Action maintains that it is not clear whether "respective" refers to different (as in greater or lesser) levels of security or whether "respective" simply refers to separate confidentiality levels (as in different access keys for different sets of medical records).

Appellant fails to understand the confusion, and respectfully asserts that the word "respective" as used in claim 35 is sufficiently definite as to comply with 35 U.S.C. §112, second paragraph. "Respective" is defined by Merriam-Webster as "particular, separate", *see e.g., http://www.merriam-webster.com/dictionary/respective*. The specific language at issue in claim 35 is: "wherein each portion of each of the multi-portion medical records is assigned a respective confidentiality level". This does not refer to the portions as having different (greater or lesser) levels of security. Instead, each portion merely has a corresponding (or "respective") confidentiality level, which may be the same level or a different level as other portions. Thus, the term "respective" simply refers to separate confidentiality levels, which may the same or different from one portion of a medical record to the next. This is clearly consistent with the common usage of the word "respective," and therefore Appellant respectfully submits that claim 35 is sufficiently definite as to comply with 35 U.S.C. §112, second paragraph.

In view of the above, Appellant respectfully requests that this rejection be overturned.

B. Rejections Under 35 U.S.C. §103 over *Kerr* in view of *Harsham* and further in view of *Vulpe*

Claims 1-8, 11-14, 17, 28-31, and 34 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kerr* in view of *Harsham* and further in view of *Vulpe*. Appellant respectfully traverses these rejections for the reasons discussed hereafter.

The test for non-obvious subject matter is whether the differences between the subject matter and the prior art are such that the claimed subject matter as a whole would have been obvious to a person having ordinary skill in the art to which the subject matter pertains. The United States Supreme Court in Graham v. John Deere and Co., 383 U.S. 1 (1966) set forth the factual inquiries which must be considered in applying the statutory test: (1) determining of the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; and (3) resolving the level of ordinary skill in the pertinent art. As discussed further hereafter, Appellant respectfully asserts that the claims include non-obvious differences over the cited art.

As discussed further below, the rejections should be overturned because when considering the scope and content of the applied *Kerr*, *Harsham*, and *Vulpe* references there are significant differences between the applied combination and claims 1-8, 11-14, 17, 28-31, and 34, as the applied combination fails to disclose all limitations of these claims. Further, Appellant respectfully submits that insufficient objective reasoning exists for combining the disparate teachings of the applied references in the manner suggested by the Examiner, absent use of impermissible hindsight in which the present application is effectively employed as a blue print to piece the disparate reference teachings together in attempt to arrive at the claimed subject matter

Thus, considering the disparity of applied references and the lack of disclosure in the applied combination of all limitations of claims 1-8, 11-14, 17, 28-31, and 34, one of ordinary

skill in the art would not find these claims obvious under 35 U.S.C. §103, and therefore the rejections should be overturned.

Brief Discussion of References

Before addressing the individual claims, Appellant first discusses the applied *Kerr*, *Harsham*, and *Vulpe* references for the convenience of the Board.

i. Kerr

As discussed in detail in Applicant's previous responses, *Kerr* is "directed to remote medication and medical service delivery systems; and more particularly to an apparatus for the monitoring of a patient and/or the delivery of prescribed medications to patients at a remote location." Col. 1, lines 13-17. *Kerr* recognizes that "although drug 'cocktails' or combinations have been very successful in extending the lives and lifestyles of many HIV-positive patients, the drugs often have very complicated protocols." Col. 1, lines 27-30. *Kerr* thus proposes a "remote medication delivery system for providing remote monitoring, and optionally delivering, medication to a patient". Col. 1, lines 61-64.

Kerr proposes a RMMS unit that may serve as a medical monitoring device to monitor certain health conditions (e.g., vital signs, etc.) of a user. The RMMS unit may be preprogrammed to detect certain "out-of-bounds" conditions that the RMMS unit detects for a given user, and in response the RMMS unit may transmit the out-of-bounds data to a remote receiver. Data transmitted from the RMMS unit may be received by a secure RMMS remote monitor central database, and placement of the data into the database file may further trigger and immediate medical profile update. Accordingly, predefined alarm procedures may be employed for the remote monitor central database for the data received into the database from the RMMS unit of *Kerr*.

ii. Harsham

Harsham is in no way concerned with or directed to medical monitoring or remote medication delivery, but is instead directed to a computer network management system that "allows a network administrator to describe the computer network according to both its physical topology and logical groups of machines and users in the computer network." Abstract. "Each network device, computer, or groups of networks devices and computers can be associated with one or more rules which define configuration parameters." *Id.* "These rules may be inherited by machines through both the physical and logical relationships of the machines in the computer network", which "simplifies the task of configuring and monitoring the network." *Id.*

Accordingly, unlike *Kerr*, *Harsham* has nothing to do with remote medication and medical service delivery systems, but instead, *Harsham* is directed to the much different task of computer network management/configuration. Also, while *Harsham* mentions use of rules that define configuration parameters for devices on a computer network, *Harsham* simply makes no mention or suggestion whatsoever of any rules that pertain in any way to patients or to medical records. Thus, the rules proposed by *Harsham* for computer network management/configuration appear to have little, if any, applicability to the RMMS unit of *Kerr*, and certainly do not provide any ability for being processed against medical records and/or for identifying a target group of patients.

iii. Vulpe

Vulpe is also not concerned with or directed to medical monitoring or remote medication delivery as is *Kerr* (nor is *Vulpe* directed to computer network management/configuration as is *Harsham*), but instead *Vulpe* is directed generally to a "document management system for managing a plurality of documents" where the system "includes a document intersection database ... [that] defines a document intersection space for the documents". Abstract. The document intersection space is defined as "the intersection of, or the link between, the architecture and/or content of one document and the architecture and/or content of another document." Paragraph 0010. *Vulpe* provides a document management system that "is

configured to receive document architecture and/or document content updates, to update the document intersection spaces associated with the document updates, and to notify the other documents which are members of the updated document intersection spaces of the changes to their respective document intersection spaces." *Id.* "In this manner, the document management system is able to synchronize or link changes in the architecture and content of associated documents." *Id.*

The document intersection database includes an intersection rule database, and an intersection instance database. Paragraph 0050. The intersection rule database includes a number of intersection rule records, each defining a respective document intersection space comprising at least two of the documents managed by the document management system. *Id.* "In effect, each intersection rule record defines a map between the document architecture data of one of the documents of the respective document intersection space and at least one other document of the same document intersection space", and "each document intersection rule record includes a rule which defines membership within the respective document intersection space." *Id.*

Thus, *Vulpe* has nothing to do with remote medication and medical service delivery systems, such as those of *Kerr*, but instead, *Vulpe* is directed to the much different task of managing documents based on their intersection space. While *Vulpe* generally mentions documents, it does not mention or provide any suggestion that the documents are medical records. Also, while *Vulpe* mentions use of intersection rule records that define a map between the document architecture of one document within an intersection space to another document in the same intersection space, *Vulpe* simply makes no mention or suggestion whatsoever of any rules that pertain in any way to patients or to medical records. Thus, the rules proposed by *Vulpe* for managing documents based on document intersection space appear to have little, if any, applicability to the RMMS unit of *Kerr*, and certainly are not taught as being processed against medical records and/or being used for identifying a target group of patients.

Independent Claim 1 and Dependent Claims 2, 7-8 and 11

i. Applied Combination Fails to Teach or Suggest All Limitations

Claim 1 recites:

> A rule processing computer-based method comprising:
> receiving user input to a processor-based computer for defining a computer-executable rule that is stored to a computer-readable medium, wherein when executed by the computer the computer-executable rule causes the computer to identify a target group of patients chosen from a group of existing patients;
> receiving user input to the computer defining, in computer-readable information stored to a computer-readable medium, a computer-executable action to be taken by said computer concerning one or more patients within the target group of patients;
> scheduling, in computer-readable information stored to a computer-readable medium, an execution time for the action;
> processing, by the computer, a plurality of computer-based medical records against said computer-executable rule to determine one or more of said medical records that satisfy the rule, wherein each of the medical records contain at least a portion of a corresponding patient's medical history stored to computer-readable medium; and
> initiating by the computer, in accordance with the scheduled execution time, the action concerning corresponding patients to which the determined one or more medical records that satisfy the rule relate. (Emphasis added).

The applied combination of *Kerr*, *Harsham*, and *Vulpe* fails to teach or suggest at least the above-emphasized limitations of claim 1, as discussed below.

- *The applied combination fails to teach or suggest receiving user input for defining a rule for identifying a target group of patients chosen from a group of existing patients*

The third Final Office Action concedes that *Kerr* fails to teach "receiving user input to a processor-based computer for defining a computer-executable rule that is stored to a computer-readable medium, wherein when executed by the computer the computer-executable rule causes the computer to identify a target group of patients chosen from a group of existing patients", as recited by claim 1, *see* pages 3-4 of the third Final Office Action. However, the third Final Office Action contends that *Harsham* discloses this limitation, citing to col. 5, line 61 – col. 6,

line 29 of *Harsham*, *see* pages 3-4 of the Second Final Office Action. Appellant continues to respectfully disagree with this position of the Examiner for the reasons discussed below.

As discussed above, *Harsham* is directed to a computer network management system where "[e]ach network device, computer, or groups of networks devices and computers can be associated with one or more rules which define configuration parameters." Abstract. While *Harsham* mentions use of rules that define configuration parameters for devices on a computer network, *Harsham* simply makes no mention or suggestion whatsoever of any rules that pertain in any way to patients or to medical records. Thus, *Harsham* fails to provide any disclosure of receiving user input for defining a computer-executable rule that when executed by the computer causes the computer to identify a target group of patients chosen from a group of existing patients, as recited by claim 1. *Harsham's* rules merely define configuration parameters for devices on a computer network, and are not in any way executable for identifying a target group of patients chosen from a group of existing patients. Thus, while *Harsham* may mention rules, it fails to teach or suggest rules that satisfy the above limitation of claim 1. *Vulpe* is not relied upon as teaching or suggesting such rules, nor does it do so.

- *The applied combination fails to teach or suggest processing medical records against the rule to determine one or more of said medical records that satisfy the rule*

Further, the third Final Office Action concedes that *Kerr* and *Harsham* fail to disclose "processing, by the computer, a plurality of computer-based medical records against said computer-executable rule to determine one or more of said medical records that satisfy the rule", recited by claim 1, *see* page 4 of the third Final Office Action. However, the third Final Office Action contends that *Vulpe* discloses this limitation, citing to sections 0069 and 0080 of *Vulpe*, *see* page 4 of the third Final Office Action. For the reasons discussed below, Appellant continues to respectfully disagree with the Examiner's position.

As discussed above, *Vulpe* is directed to a "document management system for managing a plurality of documents" where the system "includes a document intersection database ... [that] defines a document intersection space for the documents". Abstract. While *Vulpe* generally

mentions documents, it does not mention or provide any suggestion that the documents are medical records. Also, while *Vulpe* mentions use of intersection rule records that define a map between the document architecture of one document within an intersection space to another document in the same intersection space, *Vulpe* simply makes no mention or suggestion whatsoever of any rules that pertain in any way to patients or to medical records. In particular, *Vulpe* does not disclose processing a plurality of computer-based medical records against a computer-executable rule to determine one or more of the medical records that satisfy the rule, as recited by claim 1.

In view of the above, the applied combination of *Kerr*, *Harsham*, and *Vulpe* does not teach or suggest all limitations of claim 1, and thus the rejection of claim 1 should be overturned at least for this reason. In addition, the rejection of dependent claims 2, 7-8, and 11 should be overturned based at least on their dependency from claim 1.

ii. No Apparent Reason to Combine the Applied References in the Manner Suggested by the Final Office Action

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner cannot satisfy this burden through "mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ 2d 1385, 1396 (2007) (citing *In re Kahn*, 441 F.3d 977, 988, 78 U.S.P.Q.2d 1329, 1336 (Fed. Cir. 2006)). Moreover, the Examiner must provide analysis supporting any rationale why a person skilled in the art would combine the prior art to arrive at the claimed invention, and "[such] analysis should be made explicit," *KSR*, 127 S.Ct. at 1741.

As discussed above, the third Final Office Action applies a combination of three very different references in attempt to arrive at the claimed invention through piecemeal application of the references. For instance, *Kerr* is directed generally to "an apparatus for the monitoring of a patient and/or the delivery of prescribed medications to patients at a remote location" (col. 1,

lines 13-17), while *Harsham* is directed to a computer network management system that simplifies the task of configuring and monitoring the network; and *Vulpe* is directed to the further disparate art of a document management system for managing a plurality of documents based on a document intersection space. Sufficient rationale has still not been provided to establish why one of ordinary skill in the art would be motivated to combine such disparate teachings in the manner applied by the Examiner absent the use of impermissible hindsight in which the present application is used as a blue print to piece the elements together in the manner claimed.

Further, the stated reasoning in the third Final Office Action for modifying *Kerr* with the disclosure of *Harsham* merely repeats the reasoning of the first Final Office Action which is stated as to have "a means of configuring a computer network in an object-oriented manner, as recited in Harsham", pages 3-4 of the third Final Office Action. In order to achieve such a configuring of a computer network according to *Harsham*, the rules of *Harsham* that pertain to computer network device configuration would be employed, rather than any rules for identifying a target group of patients chosen from a group of existing patients, as recited by claim 1. Thus, not only does *Harsham* not disclose any such rules for identifying a target group of patients (as discussed above), but the stated reasoning in the third Final Office Action for combining *Harsham* with *Kerr* does not provide any motivation for implementing such rules for identifying a target group of patients, as recited by claim 1, but instead relies expressly upon the use of the computer network device configuration rules of *Harsham*. That is, the stated reasoning in the third Final Office Action for combining *Harsham* with *Kerr* explicitly relies upon the rules of *Harsham* being rules for configuring a computer network, rather than being rules for identifying a target group of patients as recited by claim 1.

The stated reasoning in the third Final Office Action for modifying *Kerr* and *Harsham* with the disclosure of *Vulpe* is to have "a means of determining which records satisfy a particular rule", page 4 of the third Final Office Action. This reasoning is circular in nature, merely asserting that it would be desirable to include in *Kerr* and *Harsham* a means for determining which records satisfy a particular rule in order to have a means for determining which records

satisfy a particular rule. This does not state any rationale whatsoever regarding why a person skilled in the art would combine *Vulpe* with *Kerr* and *Harsham*, but instead merely asserts that doing so would result in the asserted feature of *Vulpe* being included.

Thus, the rejections based on the applied combination of *Kerr*, *Harsham*, and *Vulpe* should be overturned for this further reason.

Dependent Claim 3

Dependent claim 3 depends indirectly from independent claim 1 and thus inherits all limitations of claim 1. Therefore, dependent claim 3 is believed allowable over the applied combination based at least on its dependency from claim 1 for the reasons presented above.

Claim 2 depends from claim 1 and further recites "wherein said processing includes processing the medical records to determine which of the medical records define the existence of a selected condition." Claim 3 depends from claim 2 and further recites "wherein the selected condition concerns a medical condition of a patient." As discussed above, the applied combination does not teach or suggest processing a plurality of computer-based medical records against a computer-executable rule to determine one or more of the medical records that satisfy the rule, and further the applied combination fails to teach or suggest processing the medical records to determine which of the medical records define the existence of a medical condition of a patient, as recited by claim 3. As discussed above, *Vulpe* does not concern medical records at all, and thus it fails to teach or suggest any rules for processing medical records to determine those that define the existence of a medical condition of a patient.

Therefore, the rejection of claim 3 should be overturned for this further reason.

Dependent Claim 4

Dependent claim 4 depends indirectly from independent claim 1 and thus inherits all limitations of claim 1. Therefore, dependent claim 4 is believed allowable over the applied combination based at least on its dependency from claim 1 for the reasons presented above.

Claim 2 depends from claim 1 and further recites "wherein said processing includes processing the medical records to determine which of the medical records define the existence of a selected condition." Claim 4 depends from claim 2 and further recites "wherein the selected condition concerns a physical criteria of a patient." As discussed above, the applied combination does not teach or suggest processing a plurality of computer-based medical records against a computer-executable rule to determine one or more of the medical records that satisfy the rule, and further the applied combination fails to teach or suggest processing the medical records to determine which of the medical records define the existence of a physical criteria of a patient, as recited by claim 4. As discussed above, *Vulpe* does not concern medical records at all, and thus it fails to teach or suggest any rules for processing medical records to determine those that define the existence of a physical criteria of a patient.

Therefore, the rejection of claim 4 should be overturned for this further reason.

Dependent Claim 5

Dependent claim 5 depends indirectly from independent claim 1 and thus inherits all limitations of claim 1. Therefore, dependent claim 5 is believed allowable over the applied combination based at least on its dependency from claim 1 for the reasons presented above.

Claim 2 depends from claim 1 and further recites "wherein said processing includes processing the medical records to determine which of the medical records define the existence of a selected condition." Claim 5 depends from claim 2 and further recites "wherein the selected condition concerns a habit of a patient." As discussed above, the applied combination does not teach or suggest processing a plurality of computer-based medical records against a computer-executable rule to determine one or more of the medical records that satisfy the rule, and further the applied combination fails to teach or suggest processing the medical records to determine which of the medical records define the existence of a habit of a patient, as recited by claim 5. As discussed above, *Vulpe* does not concern medical records at all, and thus it fails to teach or suggest any rules for processing medical records to determine those that define the existence of a habit of a patient.

Therefore, the rejection of claim 5 should be overturned for this further reason.

Dependent Claim 6

Dependent claim 6 depends indirectly from independent claim 1 and thus inherits all limitations of claim 1. Therefore, dependent claim 6 is believed allowable over the applied combination based at least on its dependency from claim 1 for the reasons presented above.

Claim 2 depends from claim 1 and further recites "wherein said processing includes processing the medical records to determine which of the medical records define the existence of a selected condition." Claim 6 depends from claim 2 and further recites "wherein the selected condition concerns an activity of a patient." As discussed above, the applied combination does not teach or suggest processing a plurality of computer-based medical records against a computer-executable rule to determine one or more of the medical records that satisfy the rule, and further the applied combination fails to teach or suggest processing the medical records to determine which of the medical records define the existence of an activity of a patient, as recited by claim 6. As discussed above, *Vulpe* does not concern medical records at all, and thus it fails to teach or suggest any rules for processing medical records to determine those that define the existence of an activity of a patient.

Therefore, the rejection of claim 6 should be overturned for this further reason.

Independent Claim 12 and dependent claims 13-14, 17, and 28

While independent claim 12 is again listed on page 3 of the third Final Office Action as being rejected under 35 U.S.C. §103 as unpatentable over *Kerr* in view of *Harsham* and *Vulpe* (as in the first and second Final Office Actions), this again appears to be a typographical error in the third Final Office Action. First, like the first and second Final Office Actions, the third Final Office Action does not address the reasoning for rejecting claim 12 on these grounds, but instead later (on pages 6-8 of the third Final Office Action) addresses claim 12 as being rejected under 35 U.S.C. §103 as unpatentable over *Kerr* in view of *Claud*, *Vulpe*, and *Bui*. Thus, in addressing claim 12 on pages 6-8 of the third Final Office Action, the Examiner appears to concede that the

combination of *Kerr*, *Harsham* and *Vulpe* that is relied upon for rejecting claim 1 fails to render claim 12 obvious under 35 U.S.C. §103.

If, however, the Examiner contends that the identification of claim 12 on page 3 is not a typographical error, the Examiner has failed to provide sufficient reasoning as to satisfy the factual inquiries required by Graham v. John Deere and Co., 383 U.S. 1 (1966) with regard to the rejection of claim 12 based on the combination of *Kerr, Harsham* and *Vulpe* in the third Final Office Action.

Similarly, dependent claims 13-14 and 17, which depend from independent claim 12, are likewise believed to again be included in error in the listing on page 3 of the third Final Office Action as being rejected under 35 U.S.C. §103 as unpatentable over *Kerr* in view of *Harsham* and *Vulpe*. If, however, the Examiner contends that the identification of claims 13-14 and 17 on page 3 is not a typographical error, the Examiner has failed to provide sufficient reasoning as to satisfy the factual inquiries required by Graham v. John Deere and Co., 383 U.S. 1 (1966) with regard to the rejection of these claims based on the combination of *Kerr, Harsham* and *Vulpe* in the third Final Office Action.

Independent Claim 29 and Dependent Claims 30-31

Independent claim 29 recites:

> A computer program product residing on a computer readable medium having a plurality of instructions stored thereon which, when executed by the processor, cause that processor to:
> receive user input from a medical service provider for defining a computer-executable rule for identifying one or more patients of said medical service provider who satisfy said rule;
> receive user input from said medical service provider for defining a computer-executable action to be taken concerning the identified one or more patients of said medical service provider who satisfy said rule;
> determine, for the computer-executable rule, an execution time for the action;
> process a plurality of computer-based medical records of patients for whom said medical service provider has an access key that grants the medical service provider access to said computer-based medical records against said computer-executable rule to identify one or more of said patients whose medical records satisfy the rule; and
> initiate, on or after the execution time, the action concerning the one or more patients whose medical records satisfy the rule. (Emphasis added).

For reasons similar to those discussed above with claim 1, Appellant respectfully submits that the applied combination of *Kerr*, *Harsham*, and *Vulpe* fails to teach or suggest at least the above-emphasized limitations of independent claim 29. Therefore, the rejection of claim 29 should be withdrawn.

- *The applied combination fails to teach or suggest processing medical records of patients for whom the medical service provider has an access key*

Further, claim 29 recites, in part, "process a plurality of computer-based medical records of patients for whom said medical service provider has an access key that grants the medical service provider access to said computer-based medical records against said computer-executable rule to identify one or more of said patients whose medical records satisfy the rule" (emphasis added). The applied *Kerr*, *Harsham*, and *Vulpe* references fail to teach or suggest any access key that grants the medical service provider access to computer-based medical records.

The third Final Office Action appears to concede this point in its treatment of claims 12-18 and 35-40 on pages 6-8, *see e.g.,* the concession on page 7 of the third Final Office Action that *Kerr* does not teach or suggest this limitation. Indeed, in its treatment of claims 12-18 and 35-40, the third Final Office Action introduces *Claud* and contends that *Claud* discloses the recited access key. However, *Claud* has not been included or relied upon in the rejection of claim 29, and thus Appellant respectfully contends that a prima facie case of obviousness has clearly not been established for claim 29. Further, for reasons similar to those discussed further herein with respect to claims 12-18 and 35-40, Appellant contends that any such reliance on *Claud* would still fail to render claim 29 obvious under 35 U.S.C. §103 at least because *Claud* is not proper prior art that can be used in rejecting the claims of the present application (for reasons discussed further herein with claims 12-18 and 35-40).

Further, as discussed above with claim 1, sufficient objective reasoning for combining the applied combination of *Kerr*, *Harsham*, and *Vulpe* has not been established. Thus, the rejection of claim 29 based on the applied combination of *Kerr*, *Harsham*, and *Vulpe* should be overturned for this further reason. Dependent claims 30-31 should likewise be overturned based at least on their dependency from claim 29.

Dependent Claim 34

Dependent claim 34 depends from independent claim 29 and thus inherits all limitations of claim 29. Therefore, dependent claim 34 is believed allowable over the applied combination based at least on its dependency from claim 29 for the reasons presented above.

Claim 34 further recites "wherein the instructions for processing the medical records against said rule comprises instructions for determining which of the medical records define the existence of a condition specified by said rule." As discussed above with claim 29, the applied combination fails to teach or suggest processing "a plurality of computer-based medical records of patients for whom said medical service provider has an access key that grants the medical service provider access to said computer-based medical records against said computer-executable rule to identify one or more of said patients whose medical records satisfy the rule". Further, the

applied combination fails to teach or suggest that such processing against the rule is for determining which of the medical records define the existence of a condition specified by the rule, as recited by claim 34. Again, *Vulpe* does not concern medical records at all, and fails to provide any teaching or suggestion of a rule for determining, from processing of medical records, the existence of a condition.

Therefore, the rejection of claim 34 should be overturned for this further reason.

C. Rejections Under 35 U.S.C. §103 over *Kerr* in view of *Barker*

Claims 9-10, 15-16, and 32-33 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kerr* in view of *Barker*. Appellant respectfully traverses these rejections for the reasons discussed hereafter.

Applicant respectfully traverses these rejections for the reasons below.

Claims 9-10 and 32-33

First, each of dependent claims 9-10 and 32-33 depends either directly or indirectly from one of independent claims 1 and 29, and thus each inherits all limitations of the respective independent claim from which it depends. It is respectfully submitted that dependent claims 9-10 and 32-33 are allowable at least because of their dependency from their respective independent claim for the reasons discussed above.

Further, in rejecting independent claims 1 and 29, the Examiner relies upon the combination of *Kerr* in view of *Harsham* and further in view of *Vulpe*. Then, in rejecting claims 9-10 and 32-33, which depend from independent claims 1 and 29, respectively, the Examiner relies solely on *Kerr* and *Baker*. Claims 9-10 and 32-33 each inherits all limitations of the respective independent claim from which it depends. The Examiner has not established in the third Final Office a prima facie case of obviousness for the independent claims 1 and 29 based solely on the *Kerr* and *Baker* references (instead, in treating those independent claims the Examiner has relied upon *Kerr*, *Harsham*, and *Vulpe*). As such, the Examiner has thus failed to

establish a prima facie case of obviousness of the further limitations recited in the dependent claims 9-10 and 32-33 based solely on the *Kerr* and *Baker* references. Accordingly, the rejection should be overturned at least due to this deficiency in the third Final Office Action.

Claims 15-16

As discussed above with claim 12, Applicant believes that claim 12 was mistakenly identified in the third Final Office Action as rejected under 35 U.S.C. §103 over the combination of *Kerr* in view of *Harsham* and *Vulpe*. Similarly, dependent claims 15-16, which depend from independent claim 12, are likewise believed to again be included in error in the listing on page 6 of the third Final Office Action as being rejected under 35 U.S.C. §103 as unpatentable over *Kerr* in view of *Barker*. Moreover, as with claims 9-10 and 32-33 discussed above, the Examiner has failed to establish a prima facie case of obviousness for independent claim 12 based solely on *Kerr* and *Barker*, and thus the Examiner has likewise failed to establish a prima facie case of obviousness for dependent claims 15-16 based on *Kerr* and *Barker*. For instance, the Examiner has failed to provide sufficient reasoning in the third Final Office Action as to satisfy the factual inquiries required by Graham v. John Deere and Co., 383 U.S. 1 (1966) with regard to the rejection of independent claim 12 (and further for dependent claims 15-16) based on the combination of *Kerr* and *Baker*, and thus the rejection should be overturned at least due to that deficiency.

D. Rejections Under 35 U.S.C. §103 over *Kerr* in view of *Claud* and further in view of *Vulpe* and further in view of *Bui*

Claims 12-28 and 35-40 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kerr* in view of *Claud* and further in view of *Vulpe* and still further in view of *Bui*. Appellant respectfully traverses these rejections for the reasons discussed hereafter.

i. Failure to Establish Prima Facie Case of Obviousness

Claud is a published U.S. patent application that was filed March 24, 2005, which is after the April 15, 2004 filing date of the present application. It appears that *Claud* claims the benefit of provisional patent application serial number 60/556,470 ("the '470 provisional application") filed March 26, 2004, which pre-dates the filing date of the present application by less than a month. In addition, *Claud* claims the benefit of several other provisional patent applications having filing dates ranging from June 8, 2004 to November 3, 2004, all of which do not pre-date the filing of the present application.

Thus, only the subject matter that was actually present in the '470 provisional application is afforded the earlier date of March 26, 2004. The Examiner has failed to provide Applicant a copy of the '470 provisional application. Further, the Examiner has failed to identify where the relied-upon teaching of *Claud* is actually present in the '470 provisional application. As such, the Examiner has failed to establish a prima facie case of obviousness under 35 U.S.C. §103(a) because the Examiner has failed to establish that the relied upon teachings of *Claud* are actually prior art (i.e., are actually present in the '470 provisional application) to the present application.

Thus, the rejection raised in the third Final Office Action should be overturned at least on this basis (i.e., for failure to establish a prima facie case of obviousness).

ii. *Claud* is not proper prior art that can be used in rejecting claims 12-28 and 35-40

Appellant further submits that even the portion of *Claud* that is afforded the earlier filing date of the '470 provisional application (i.e., March 26, 2004) is not prior art that may be properly used for rejecting claims 12-28 and 35-40 in view of the Schoenberg Declaration submitted herewith under 37 C.F.R. 1.131. Appellant respectfully notes that the Schoenberg Declaration makes clear that an embodiment of the invention (e.g., referred to as the CareKey system) was reduced to practice and worked for its intended purpose prior to the earliest priority date of *Claud* (i.e., prior to March 26, 2004). Accompanying evidence in the form of a document that was in existence prior to March 26, 2004 (submitted as Appendix A of the Schoenberg Declaration) which described features of the CareKey system that were operational support the assertions made by Roy Schoenberg in the Declaration.

While the accompanying evidence of Appendix A of the Schoenberg Declaration may not include express explanations of all limitations of claims 12-28 and 35-40, such support of all claimed limitations is not required, provided that any missing limitation is supported by the declaration itself, *see* M.P.E.P. §715.07(I), *citing Ex parte Ovshinsky*, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989). The Schoenberg Declaration further makes clear that all limitations of the claims 12-28 and 35-40 were conceived prior to March 26, 2004, and also makes clear that at least those limitations of independent claims 12, 18, 35 and 39 read on the CareKey system that was operational prior to March 26, 2004. Because the implementation of the CareKey system constituted actual reduction to practice of an embodiment of the invention prior to the effective date of *Claud*, the issue of due diligence does not arise in this instance, *see e.g.,* M.P.E.P. §715.07(III). Further, each of dependent claims 13-17, 19-28, 36-39 and 40 depends either directly or indirectly from one of independent claims 12, 18, 35, and 39, these dependent claims are also believed to be allowable over the applied *Claud* reference based at least on their dependency from their respective independent claim.

Thus, without conceding that *Claud* actually discloses the limitations for which it is relied upon by the Examiner as disclosing and without conceding that the subject matter contained in the applied combination of references relied upon by the Examiner teaches or suggests all

limitations of claims 12-28 and 35-40, the rejection is not sustainable at least because *Claud* is not prior art that may be used in rejecting the claims. Accordingly, in view of the above, the rejection of claims 12-28 and 35-40 should be overturned.

Conclusion

In view of the above, Appellant requests that the board overturn the outstanding rejections of claims 1-40. Attached hereto are a Claims Appendix, Evidence Appendix, and Related Proceedings Appendix. As noted in the attached Evidence Appendix, a Declaration of Roy Schoenberg pursuant to 37 C.F.R. § 1.131 is submitted herewith. As noted in Section II of this appeal brief, there are no related appeals are identified in Section II above, and thus as noted by the Related Proceedings Appendix, no decisions in any such related proceedings are provided.

Dated: October 9, 2009

Respectfully submitted,

By_____

Jody C. Bishop
Registration No.: 44,034
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
(214) 855-8007
(214) 855-8200 (Fax)
Attorney for Applicant

VIII. CLAIMS APPENDIX

Claims Involved in the Appeal of Application Serial No. 10/825,352

1. A rule processing computer-based method comprising:

receiving user input to a processor-based computer for defining a computer-executable rule that is stored to a computer-readable medium, wherein when executed by the computer the computer-executable rule causes the computer to identify a target group of patients chosen from a group of existing patients;

receiving user input to the computer defining, in computer-readable information stored to a computer-readable medium, a computer-executable action to be taken by said computer concerning one or more patients within the target group of patients;

scheduling, in computer-readable information stored to a computer-readable medium, an execution time for the action;

processing, by the computer, a plurality of computer-based medical records against said computer-executable rule to determine one or more of said medical records that satisfy the rule, wherein each of the medical records contain at least a portion of a corresponding patient's medical history stored to computer-readable medium; and

initiating by the computer, in accordance with the scheduled execution time, the action concerning corresponding patients to which the determined one or more medical records that satisfy the rule relate.

2. The method of claim 1 wherein said processing includes processing the medical records to determine which of the medical records define the existence of a selected condition.

3. The method of claim 2 wherein the selected condition concerns a medical condition of a patient.

4. The method of claim 2 wherein the selected condition concerns a physical criteria of a patient.

5. The method of claim 2 wherein the selected condition concerns a habit of a patient.

6. The method of claim 2 wherein the selected condition concerns an activity of a patient.

7. The method of claim 1 wherein said action includes one or more of:

posting a HTML link for a patient;

posting a message for a patient;

providing a tool to a patient;

transmitting an email to a patient;

updating a patient's medical record;

transmitting a pop-up message to a patient;

recommending that a patient join a discussion board;

providing a patient with medical information;

providing a medical report to a patient;

providing a medical report to a third party;

executing a program; and

notifying a third party.

8. The method of claim 1 wherein scheduling the execution time includes specifying a single, non-recurring, execution time.

9. The method of claim 1 wherein scheduling the execution time includes specifying a plurality of non-recurring execution times.

10. The method of claim 1 wherein scheduling the execution time includes specifying a recurring execution time.

11. The method of claim 1 wherein said initiating the action in accordance with the scheduled execution time comprises initiating, on or after the execution time, the action concerning the corresponding patients to which the determined one or more medical records that satisfy the rule relate.

12. A rule processing computer-based method comprising:

determining by a computer, for a specific computer-executable rule that is stored to a computer-readable medium, a target group of patients, wherein said target group of patients comprise at least a subset of patients for whom a particular medical service provider has an access key that grants the medical service provider access to medical records of the patients;

determining, for said specific computer-executable rule, an action to be initiated by the computer concerning one or more patients within the target group of patients whose respective medical records satisfy said specific computer-executable rule, wherein the action comprises communicating information to the one or more patients;

determining, for said specific computer-executable rule, an execution time for the action; and

initiating by the computer the action concerning the one or more patients within the target group of patients on or after the execution time.

13. The method of claim 12 wherein the action includes one or more of:

posting a HTML link for a patient; posting a message for a patient; providing a tool to a patient;

transmitting an email to a patient;

updating a patient's medical record;

transmitting a pop-up message to a patient;

recommending that a patient join a discussion board;

providing a patient with medical information;

providing a medical report to a patient;

providing a medical report to a third party;

executing a program; and

notifying a third party.

14. The method of claim 12 wherein the execution time is a single, non-recurring, execution time.

15. The method of claim 12 wherein the execution time is a plurality of non-recurring execution times.

16. The method of claim 12 wherein the execution time is a recurring execution time.

17. The method of claim 12 wherein the target group of patients is defined by processing the medical records to determine which of the medical records define the existence of a selected condition specified by the specific computer-executable rule.

18. A computer program product residing on a computer readable medium having a plurality of instructions stored thereon which, when executed by the processor, cause that processor to:

determine from computer-based medical records of patients for whom a particular medical service provider has an access key that grants the medical service provider access to said computer-based medical records, a target group of said patients whose respective medical records satisfy a rule defined by the medical service provider;

determine an action to be taken concerning the determined target group of patients; and

schedule an execution time for the action to be taken concerning the determined target group of patients.

19. The computer program product of claim 18 wherein the instructions for determining said target group of said patients whose respective medical records satisfy said rule include instructions for processing the medical records to determine which of the medical records define the existence of a selected condition specified by said rule.

20. The computer program product of claim 19 wherein the selected condition concerns a medical condition of a patient.

21. The computer program product of claim 19 wherein the selected condition concerns a physical criteria of a patient.

22. The computer program product of claim 19 wherein the selected condition concerns a habit of a patient.

23. The computer program product of claim 19 wherein the selected condition concerns an activity of a patient.

24. The computer program product of claim 18 wherein the action comprises one or more of:

posting a HTML link for a patient;

posting a message for a patient;

providing a tool to a patient;

transmitting an email to a patient;

updating a patient's medical record;

transmitting a pop-up message to a patient;

recommending that a patient join a discussion board;

providing a patient with medical information;

providing a medical report to a patient;

providing a medical report to a third party;

executing a program; and

notifying a third party.

25. The computer program product of claim 18 wherein the instructions for scheduling the execution time include instructions for specifying a single, non-recurring, execution time.

26. The computer program product of claim 18 wherein the instructions for scheduling the execution time include instructions for specifying a plurality of non-recurring execution times.

27. The computer program product of claim 18 wherein the instructions for scheduling the execution time include instructions for specify a recurring execution time.

28. The computer program product of claim 18 further comprising instructions for executing the action concerning the determined target group of patients on or after the execution time.

29. A computer program product residing on a computer readable medium having a plurality of instructions stored thereon which, when executed by the processor, cause that processor to:

receive user input from a medical service provider for defining a computer-executable rule for identifying one or more patients of said medical service provider who satisfy said rule;

receive user input from said medical service provider for defining a computer-executable action to be taken concerning the identified one or more patients of said medical service provider who satisfy said rule;

determine, for the computer-executable rule, an execution time for the action;

process a plurality of computer-based medical records of patients for whom said medical service provider has an access key that grants the medical service provider access to said computer-based medical records against said computer-executable rule to identify one or more of said patients whose medical records satisfy the rule; and

initiate, on or after the execution time, the action concerning the one or more patients whose medical records satisfy the rule.

30. The computer program product of claim 29 wherein the the action includes one or more of:

posting a HTML link for a patient;

posting a message for a patient;

providing a tool to a patient;

transmitting an email to a patient;

updating a patient's medical record;

transmitting a pop-up message to a patient;

recommending that a patient join a discussion board;

providing a patient with medical information;

providing a medical report to a patient;

providing a medical report to a third party;

executing a program; and

notifying a third party.

31. The computer program product of claim 29 wherein the execution time is a single, non-recurring, execution time.

32. The computer program product of claim 29 wherein the execution time is a plurality of non-recurring execution times.

33. The computer program product of claim 29 wherein the execution time is a recurring execution time.

34. The computer program product of claim 29 wherein the -instructions for processing the medical records against said rule comprises instructions for determining which of the medical records define the existence of a condition specified by said rule.

35. A rule processing computer-based method comprising:

processing, by a record processing module, a plurality of computer-based multi-portion medical records that are stored to a computer-readable repository and that contain medical history information for a plurality of patients for determining a target group of said plurality of patients whose medical records a particular medical service provider is authorized to access, wherein each portion of each of the multi-portion medical records is assigned a respective confidentiality level;

processing, by a rule processing engine, the medical records of the determined target group of patients against a computer-executable rule defined by said particular medical service provider to identify one or more of said target group of patients whose medical records satisfy the rule;

determining, by the rule processing engine, an action defined by said particular medical service provider for the rule, said determined action to be taken concerning said identified one or more patients within the target group of patients; and

scheduling, by the rule processing engine, an execution time for the action.

36. The computer program product of claim 29 further comprising instructions that when executed by the processor cause the processor to:

determine, from a plurality of computer-based medical records stored to a computer-readable repository, ones of said computer-based medical records for which said medical service provider has an access key that grants the medical service provider access to said computer-based medical records, said determined ones of said computer-based medical records for which said medical service provider has an access key that grants the medical service provider access to said computer-based medical records forming a target group of computer-based medical records.

37. The computer program product of claim 36 wherein the instructions for processing the medical records against said rule comprises instructions for processing said determined target group of computer-based medical records against said rule for determining which of the target group of computer-based medical records define the existence of a condition specified by said rule.

38. The computer program product of claim 36 wherein said medical service provider has an access key that grants the medical service provider access to a portion of information contained in said target group of computer-based medical records, and wherein the instructions for processing the medical records against said rule comprises instructions for processing said determined target group of computer-based medical records against said rule for determining from the portion of information contained in said target group of computer-based medical records which of the target group of computer-based medical records define the existence of a condition specified by said rule.

39. A system comprising:

a computer-readable repository for storing medical records;

an access key management system for managing access keys that grant a medical service provider authorized access to at least a portion of said medical records; and

a rule processing engine configured to:

a) receive input from a medical service provider to define a rule specifying criteria for selecting one or more of said medical records to which said medical service provider has an access key that grants the medical service provider with authorized access;

b) receive input specifying corresponding action to take when said rule is satisfied;

c) receive input specifying a corresponding execution time for performing said corresponding action;

d) process said medical records for which said medical service provider has an access key that grants the medical service provider with authorized access against said rule to determine one or more of said medical records that satisfy the rule; and

e) initiate, for patients to whom the determined one or more medical records that satisfy the rule relate, said corresponding action to be performed at said corresponding execution time.

40. The system of claim 39 wherein said corresponding action comprises communicating information to said patients to whom the determined one or more medical records that satisfy the rule relate.

IX. EVIDENCE APPENDIX

Submitted herewith as evidence is a Declaration of Roy Schoenberg under 37 C.F.R. § 1.131. No further evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

X. RELATED PROCEEDINGS APPENDIX

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: October 9, 2009

Signature: Donna Forbit
(Donna Forbit)

Docket No.: 66729/P028US/10613659

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Roy Schoenberg

Application No.: 10/825,352 Confirmation No.: 8650

Filed: April 15, 2004 Art Unit: 3686

For: RULE MANAGEMENT METHOD AND SYSTEM Examiner: V. D. Koppikar

DECLARATION OF ROY SCHOENBERG
SUBMITTED UNDER 37 C.F.R. 1.131

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

1. My name is Roy Schoenberg, I am over 21 years of age, and make this declaration based upon my own personal knowledge.

2. I am the inventor of the invention claimed in the above-identified patent application.

3. Prior to March 26, 2004, I conceived the idea of a rule management method and system as recited in the above-identified patent application.

4. Prior to March 26, 2004, my employer, CareKey Inc., reduced to practice an operational rule management system, referred to herein as "the CareKey system."

5. I worked as part of the team within CareKey Inc. that developed and reduced to practice the CareKey System.

6. As evidence of that reduction to practice, an internal document titled "CareKey Key Organizer Customization Catalog" was prepared prior to March 26, 2004 by personnel within CareKey Inc., which describes certain features and operational capabilities of the CareKey system; and a copy of such document is attached hereto as Appendix A.

7. The version of the document attached as Appendix A includes markings that indicate changes or edits made to the document by certain personnel who were drafting the document, and all such changes existed in the document prior to March 26, 2004.

8. The version of the document attached as Appendix A further has certain portions thereof redacted, as indicated therein.

9. The CareKey system was, prior to March 26, 2004, operable on a computer system for performing rule processing.

10. The CareKey system, as it existed prior to March 26, 2004, included an access key management system that grant a medical service provider authorized access to medical records of a patient.

11. In the CareKey system, as it exited prior to March 26, 2004, the clinical data included multi-portion medical records stored to a computer-readable repository, which contained medical history information for a plurality of patients, wherein each portion of each of the multi-portion medical records was assignable a respective confidentiality level.

12. The CareKey system was, prior to March 26, 2004, operable to determine patients for whom a particular medical service provider has an access key that grants the medical service provider access to medical records of the patients (*see e.g.,* the rules discussed at page 12 of Appendix A).

13. The CareKey system was, prior to March 26, 2004, operable to determine those patients whose respective patient-specific medical information (e.g., contained in their respective medical records), satisfies the computer-executable rule (*see e.g.,* the rules discussed at pages 12-14 of Appendix A).

14. The CareKey system was, prior to March 26, 2004, operable to receive input for defining the rule to be processed for the medical service provider's patients (*see e.g.,* the rules discussed at pages 12-14 of Appendix A).

15. The CareKey system was, prior to March 26, 2004, operable to determine an action to be initiated by the computer concerning the target group of patients whose respective medical records satisfy the specific computer-executable rule (*see e.g.,* the actions discussed on pages 12-14 of Appendix A).

16. In the CareKey system, as it existed prior to March 26, 2004, one such action that could be initiated was communicating information to the one or more patients (*see e.g.,* the actions discussed on pages 12-14 of Appendix A, including the action of sending a message or email to the patient).

17. The CareKey system was, prior to March 26, 2004, operable to receive input specifying a corresponding action to take when the rule is satisfied (*see e.g.,* the actions to be taken as discussed at pages 12-14 of Appendix A).

18. The CareKey system was, prior to March 26, 2004, operable to determine an execution time for specific computer-executable rules (*see e.g.,* the discussion of "when" on page 14 of Appendix A).

19. The CareKey system was, prior to March 26, 2004, operable to receive input specifying a corresponding execution time for performing the corresponding action to be taken when certain rules are satisfied (*see e.g.,* the scheduled execution times discussed at pages 12-14 of Appendix A).

20. The CareKey system was, prior to March 26, 2004, operable to initiate, by the computer, the action concerning the target group of patients for whom the certain rules are satisfied on or after the execution time (*see e.g.,* page 13 of Appendix A).

21. The CareKey system, as it exited prior to March 26, 2004, contained computer-executable software code including a plurality of instructions stored to a computer readable medium, which were executable by a processor to cause the computer to perform the above-mentioned operations.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: October 9, 2009

(Roy Schoenberg)

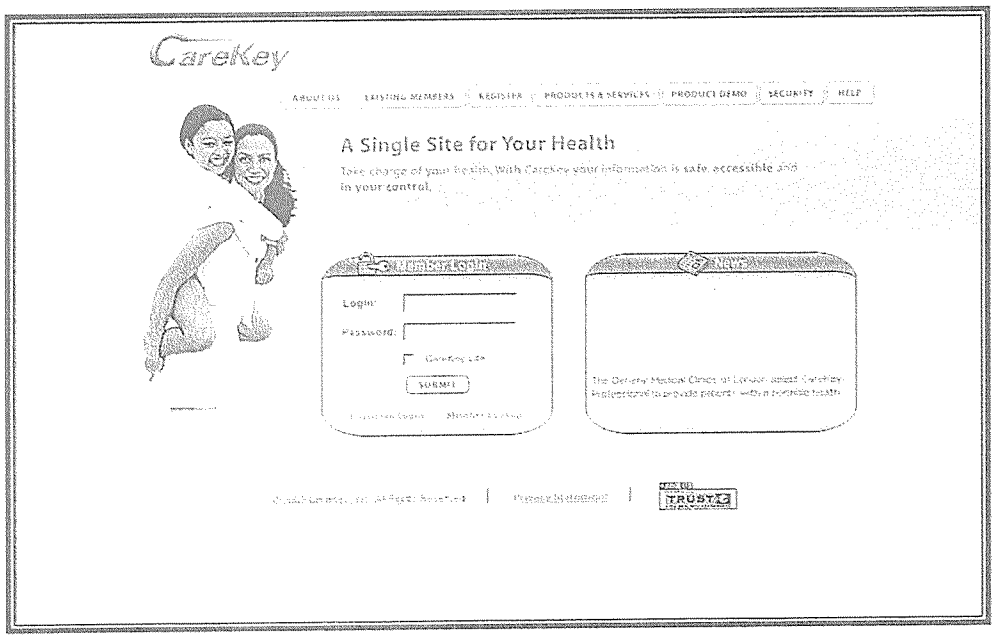
Appendix A

CareKey Inc ™

137 Newbury Street
Boston MA • 02116 • USA

Phone: +1 (617) 375-6700
Fax: +1 (617) 859-9775
Email: info@carekey.com
URL: www.carekey.com

CareKey
Key Organizer Customization Catalog



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137 Newbury Street
Boston MA • 02116 • USA

Phone: +1 (617) 375-6700
Fax: +1 (617) 859-9775
Email: info@carekey.com
URL: www.carekey.com

Action	Description	Example
 Posting	Post a link to the member's CareKey. The link will appear in the running news ticker.	American Diabetes Association site for Diabetics
 Messages	Post a message in the member's CareKey message box	Alert: Dual Rx of Drug A and Drug B combination is known to create adverse drug to drug interaction
Tools	Provide a member a specific tool	A Blood Sugar tracking tool for Diabetic patients. This tool will appear on the left panel of the member's CareKey.
 EMail	Send an email to the member's email address	Email members who have not had an HgBA1C test performed in the last 6 months
 Concepts	Update a concept for members who satisfy defined criteria.	Update the Diabetic Risk Index for members who have: Insulin on their Medication list OR have a HbBA1C measurement OR have Diabetes listed in their Problem list.
	Update a concept that serves as a counter and accumulates longitudinal knowledge over time.	Update a Diabetic Compliance counter for all members who have had a HgBA1C test performed on time. You can later view the distribution of the compliance in a certain patient population.
 Popup	A pop-up message will appear when the member logs into her CareKey	Please complete the Diabetes Health Risk Assessment. Or Announce a change to the opening hours of the organization.
1. Communities	Suggest a discussion board to members of a particular profile.	Diabetics Community for CareKey users who are interested in chatting with other diabetics

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137 Newbury Street
Boston MA • 02116 • USA

Phone: +1 (617) 375-6700
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URL: www.carekey.com

2. Recommendation (Information packets)	Post educational information to the member's message box	Post a message on the importance of HgbA1C testing. When the member opens her messages in CareKey she will see this recommendation.
3. Reports	Automatically create a status report on particular parameters and send it to the member or another person in the member's fixed contact list. This report is sent by email	Send an updated HgbA1C chart with new educational material once every 6 months to the member and to her primary care physician (via email).
4. Run program	Activate a custom program to perform a specific function with applications outside of the CareKey	Framingham tool calculation for Cardiac patients. Another example: link to a hospital paging system.
5. Email third party	Send an email to an email address of other stakeholders who are part of the member's fixed contact list.	Notify member's primary care physician, by email, on number of patients who are late on their HgbA1C testing
6. Automatic Alerts	Be notified about significant changes in the member's record. Flag the patient in every Key Organizer where this patient appears	Alert the case manager about patients with abnormal peak flows. These patients will be flagged in the Key Organizer of every user treating this patient.

WHEN? Defining the timing and frequency of the action performed
The third step to creating a rule is defining the time considerations to include: what is the action's start date? What is the end date? How often is the population evaluated and how frequently should the member receive a message?

Create your own rule:

Group (Who?)	Task (What?)	Time (When? How Frequently?)
Asthmatics, between 18 and 22	Pop-Up: "Prepare for the winter: Avoid asthma attacks by dry cleaning your blankets and comforters where dust mites may reside."	Time: October, November Frequency: Evaluate for new members once every two days. Send a pop up to a member once every month.

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Boston MA • 02116 • USA

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